

In the Matter of Merchant Mariner's Document No. Z-914376-D1 and
all other Licenses, Certificates and Documents

Issued to: JOSE MARTINEZ CAMACHO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOSE MARTINEZ CAMACHO

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 2 March 1956, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-914376-D1 issued to Jose Martinez Camacho upon finding him guilty of misconduct based up on a specification alleging in substance that while serving as a saloon messman on board the American SS JUNIOR under authority of the document above described, on or about 5 February 1956, while said vessel was at sea, he assaulted and battered a fellow crew member, William Armstead, with a dangerous weapon; to wit: a dinner plate.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. An interpreter was furnished for Appellant's benefit. The Examiner entered a plea of "not guilty" on behalf of Appellant, to the charge and specification when Appellant stated that he hit Armstead with the plate in self-defense.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of five members of the crew.

In defense, Appellant offered in evidence the testimony of one member of the crew who witnessed the incident. His testimony was substantially in accord with that of the Investigating Officer's witnesses. Appellant stated that he chose to remain silent and had no further evidence.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant and given both parties an opportunity to submit proposed findings and conclusions, the

Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-914376-D1, and all other licenses, certificates, and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months' outright suspension and three months' suspension on probation until eighteen months after the termination of the outright suspension.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 5 February 1956, Appellant was serving as a saloon messman on board the American SS JUNIOR and acting under authority of his Merchant Mariner's Document No. Z-914376-D1 while the ship was at sea.

On the morning of this date, Appellant addressed the Second Cook in Spanish while they were working in the galley. Crew messman Armstead told Appellant to speak English since this was not a Spanish ship. Appellant summoned the Chief Steward to the galley to prevent trouble. The Chief Steward told Armstead not to start arguments. Appellant again spoke in Spanish. When Armstead insisted that Appellant speak English, an argument started between the two seamen. Armstead used extremely vulgar and insulting language. Appellant had a dinner plate in his hand and he threw it at Armstead hitting him on the forehead above his left eye. The Chief Steward stepped between the two men. Armstead suffered a serious gash from the plate. When the Master saw the wound, he gave orders for the ship to return to Cristobal, Canal Zone - a two-hour trip. Armstead received medical treatment at a Cristobal hospital. The wound required 16 stitches.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the findings and decision are unjustified; Appellant was provoked by Armstead; the suspension is a hardship for Appellant and his family since this is Appellant's only livelihood.

OPINION

The findings and order are amply supported by the evidence in the record. Although Armstead was guilty of provocation by verbal

abuse, he was not the aggressor in any physical respect. Provocation by insulting words alone does not justify an assault and battery no matter how offensive the language is; but such provocation may be considered in mitigation. 5 Corpus Juris 644-5. Undoubtedly, the plate became a dangerous weapon when used to cause a cut requiring 16 stitches. The leniency of the order can only be justified by Appellant's prior unblemished record and the very provocative language used by Armstead.

The personal hardship to Appellant is secondary to the necessity of taking remedial action in order to maintain discipline and to protect other seamen on merchant vessels of the United States against recurrences of such incidents as this.

ORDER

The Order of the Examiner dated at New York, New York, on 2 March 1956 is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 23rd day of May, 1956.